

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE MONTANA NATIONAL
7 GUARD ASSOCIATION

8
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,
10 ORDER, AND MEMORANDUM OPINION

11 These informal contested case proceedings were filed before the Commissioner
12 of Political Practices (Commissioner) to consider the appeal of the principal
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,
14 the principal appealed the Commissioner's assessment of a civil penalty resulting
15 from its late filing of a lobbying disclosure report. The principal filed a written
16 Waiver of Hearing waiving its right to an in-person hearing, and submitted a written
17 statement for the Commissioner's consideration.

18 Based on the written submissions of the principal, the documents of record in the
19 Commissioner's file, and the applicable law, the Commissioner makes the following
20 findings of fact, conclusions of law, and order.

21 **FINDINGS OF FACT**

22 1. The Montana National Guard Association is a principal registered with the
23 Commissioner.

24 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
27 against any person who fails to file lobbying disclosure reports within the time
 required by law.

1 3. The post-Session 2007 lobbying disclosure report for the Montana National
2 Guard Association was required to be filed no later than May 29, 2007.

3 4. On May 16, 2007 the office of the Commissioner sent an email to all
4 principals, including the Montana National Guard Association. The email advised
5 principals that a post-Session 2007 lobbying financial disclosure report was required
6 to be filed by May 29, 2007. The email referenced the appropriate form that was
7 required to be filed, known as a form L-5A, and noted that it was available for
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),
9 MCA, the email stated: "A report must be filed in this office even though neither
10 lobbying nor incurring of lobbying expenses may have occurred."

11 5. The Montana National Guard Association failed to file its L-5A on or before
12 May 29, 2007.

13 6. On May 30, 2007, the Commissioner sent a letter to Stephen Mehring stating
14 that the post-Session L-5A report was due May 29, 2007, but had not been received.
15 The letter stated that a civil penalty started being assessed on May 30, 2007, at \$50
16 per day, and would continue until the report was filed or until the penalty amount
17 reached \$2,500. The letter urged the principal to fax the delinquent report
18 immediately, followed by a hard copy.

19 7. On June 4, 2007, the principal filed its report. Because the report was filed
20 four business days late, a \$200 civil penalty was assessed.

21 8. The Montana National Guard Association requested a hearing to contest the
22 civil penalty. The Commissioner issued a Notice of Agency Action and Opportunity
23 for Hearing on August 9, 2007. The Montana National Guard Association filed a
24 written Waiver of Hearing and submitted a written statement for the
25 Commissioner's consideration.

26 9. In a written statement Lieutenant Colonel Stephen Mehring asked on behalf
27 of the Montana National Guard Association that the penalty be waived because he

1 was out of state on active duty tour with the US Air Force and was incapacitated for
2 a time due to an injury.

3 CONCLUSIONS OF LAW

4 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
5 and 5-7-306, MCA.

6 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

7 3. § 5-7-306, MCA, provides:

8 **Civil penalties for delays in filing -- option for hearing --**

9 **suspension of penalty.** (1) In addition to any other penalties or
10 remedies established by this chapter, a person who fails to file a report
11 within the time required by this chapter is subject to a civil penalty of
\$50 for each working day that the report is late until the report is filed
or until the penalties reach a maximum of \$2,500 for each late report.

12 The person against whom a penalty is assessed may request an informal contested
13 case hearing before the Commissioner. At the hearing, the Commissioner is required
14 to consider any factors or circumstances in mitigation, and may reduce or waive the
15 civil penalty. § 5-7-306(3), MCA.

16 4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the
17 Commissioner “no later than 30 days following adjournment of a Legislative
18 Session,” and the report must include “all payments made during the session, except
19 as previously reported.” § 5-7-208(4), MCA.

20 MEMORANDUM OPINION

21 Information offered in a written statement by Association President Stephen
22 Mehring is compelling. He stated that filing the report late was a result of an injury
23 incurred while deployed out of state on active duty with the Air Force.

24 Consideration of these circumstances leads me to conclude that a reduced civil
25 penalty is appropriate in this case. However, I urge principals to carefully review
26 and understand the statutory filing requirements to ensure that they comply with the
27 law and to avoid the assessment of civil penalties in the future.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Montana National Guard Association shall pay a reduced civil penalty of \$100 to this office no later than September 28, 2007.

DATED this 29th day of August, 2007.



Dennis Unsworth
Commissioner of Political Practices

NOTICE: This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-4-701 through 2-4-711.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Stephen Mehring
Montana National Guard Association
PO Box 6683
Great Falls MT 59406

DATED: August 29th, 2007

Mary Baker
Program Supervisor